

AMENDED IN ASSEMBLY MARCH 16, 2009

AMENDED IN ASSEMBLY MARCH 9, 2009

AMENDED IN ASSEMBLY MARCH 2, 2009

CALIFORNIA LEGISLATURE—2009–10 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 23

Introduced by Assembly Members Coto and Arambula
(Principal coauthor: Assembly Member Swanson)
(Coauthors: Assembly Members Carter, Feuer, Galgiani, Hayashi,
Jones, Nava, and Torres)
(Coauthor: Senator DeSaulnier)

January 15, 2009

An act to amend Sections 1275, 1277.5, 4003, and 4004 of, and to add Sections 1277.1 and 1329.5 to, 4003 and 4004 of the Unemployment Insurance Code, relating to unemployment insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 23, as amended, Coto. Unemployment insurance: *extended benefits*.

~~(1) Under existing law, unemployment compensation benefits are based on wages paid in a base period that is calculated according to the month within which the benefit year begins.~~

~~This bill would, for new claims filed on or after January 1, 2010, for which a valid claim or benefit year cannot be established under the currently defined base periods, establish alternative base periods, as provided. This bill would also require a claimant to submit specified~~

~~information regarding wages to the Employment Development Department via an affidavit, under specified conditions.~~

~~Because this measure would increase the amount of unemployment compensation paid, it would make an additional amount payable from the Unemployment Fund, a continuously appropriated special fund, and thereby would make an appropriation.~~

~~Because this measure would require specified information to be submitted to the Employment Development Department on an affidavit, the submission of which, if false, is a misdemeanor under existing law, it would impose a state-mandated program.~~

~~(2) Existing~~

~~Existing law provides that, for purposes of eligibility for federal-state extended benefits, an individual have earnings that exceed either 40 times his or her most recent weekly benefit amount or 1.5 times the highest quarter in the base period, and precludes the implementation of the alternative eligibility requirement for federal-state extended benefits unless the Director of the Employment Development Department determines that these provisions have been approved by the United States Department of Labor.~~

The federal Supplemental Appropriations Act of 2008, created the Emergency Unemployment Compensation (EUC) Program on June 30, 2008, which provides for the payment of up to 13 weeks of federally funded emergency unemployment compensation (EUC) benefits to eligible unemployed individuals nationwide who had already collected all regular state benefits for which they were eligible. The federal Unemployment Compensation Extension Act of 2008, which was enacted on November 21, 2008, further expanded the EUC Program to provide for the payment of 20 weeks of benefits nationwide, and provides for the payment of 13 more weeks of benefits to eligible unemployed individuals in states with high unemployment rates, as determined by specified criteria. The federal American Recovery and Reinvestment Act of 2009, which was enacted on February 17, 2009, extends to May 31, 2010, the period of time during which claims for EUC benefits can be filed and paid.

The bill would provide for the payment of temporary federal-state EUC benefits authorized under the Supplemental Appropriations Act of 2008, the Unemployment Compensation Extension Act of 2008, and the American Recovery and Reinvestment Act of 2009 to eligible individuals in this state until December 6, 2009, or until a specified provision of federal law providing for the payment of those benefits

expires, whichever is later. *Because the bill would provide for the payment or additional amounts from the Unemployment Fund, a continuously appropriated special fund, it would make an appropriation.*

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

~~(4) The~~

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

~~(5) This~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1275 of the Unemployment Insurance~~
2 ~~Code is amended to read:~~
3 ~~1275. (a) Unemployment compensation benefit award~~
4 ~~computations shall be based on wages paid in the base period.~~
5 ~~“Base period” means: for benefit years beginning in October,~~
6 ~~November, or December, the four calendar quarters ended in the~~
7 ~~next preceding month of June; for benefit years beginning in~~
8 ~~January, February, or March, the four calendar quarters ended in~~
9 ~~the next preceding month of September; for benefit years beginning~~
10 ~~in April, May, or June, the four calendar quarters ended in the next~~
11 ~~preceding month of December; for benefit years beginning in July,~~
12 ~~August, or September, the four calendar quarters ended with the~~
13 ~~next preceding month of March. Wages used in the determination~~
14 ~~of benefits payable to an individual during any benefit year may~~

1 not be used in determining that individual's benefits in any
2 subsequent benefit year.

3 (b) For any new claim filed with an effective date on or after
4 January 1, 2010, if an individual cannot establish a claim under
5 subdivision (a), then "base period" means: for benefit years
6 beginning in October, November, or December, the four calendar
7 quarters ended in the next preceding month of September; for
8 benefit years beginning in January, February, or March, the four
9 calendar quarters ended in the next preceding month of December;
10 for benefit years beginning in April, May, or June, the four calendar
11 quarters ended in the next preceding month of March; for benefit
12 years beginning in July, August, or September, the four calendar
13 quarters ended in the next preceding month of June. As provided
14 in Section 1280, the quarter with the highest wages shall be used
15 to determine the individual's weekly benefit amount. Wages used
16 in the determination of benefits payable to an individual during
17 any benefit year may not be used in determining that individual's
18 benefits in any subsequent benefit year.

19 SEC. 2. Section 1277.1 is added to the Unemployment
20 Insurance Code, to read:

21 1277.1. (a) Notwithstanding Section 1277, if an individual
22 has a subsequent new claim and the previous valid claim was filed
23 under subdivision (b) of Section 1275, the new claim shall only
24 be valid if, during the 52-week period beginning with the effective
25 date of the previous claim, either of the following applies:

26 (1) The individual earned or was paid sufficient wages to meet
27 eligibility requirements of subdivision (a) of Section 1281 and
28 performed some work.

29 (2) The individual did not receive benefits under this part and
30 was disabled and was entitled to receive wage loss benefits under
31 Part 2 (commencing with Section 2601) of this code or under
32 Division 4 (commencing with Section 3201) of the Labor Code,
33 under any workers' compensation law, under employer's liability
34 law, or under any disability insurance law of any other state or the
35 federal government.

36 (b) For purposes of this section, "wages" includes any and all
37 compensation for personal services performed as an employee for
38 the purpose of meeting the eligibility requirements of subdivision
39 (a) of Section 1281. This subdivision is not applicable to the
40 computation of an award for disability benefits.

1 ~~SEC. 3.— Section 1277.5 of the Unemployment Insurance Code~~
2 ~~is amended to read:~~

3 ~~1277.5. In determining, under Sections 1277 and 1277.1,~~
4 ~~whether a new claim is valid, twice the amount that an individual~~
5 ~~was entitled to receive under Part 2 (commencing with Section~~
6 ~~2601) of this division or under Division 4 (commencing with~~
7 ~~Section 3201) of the Labor Code, or under any workers'~~
8 ~~compensation law, employer's liability law, or disability insurance~~
9 ~~law of any other state or of the federal government, during the~~
10 ~~52-week period beginning with the effective date of the previous~~
11 ~~valid claim, shall be considered as wages earned or paid to the~~
12 ~~individual during that 52-week period for purposes of meeting the~~
13 ~~eligibility requirements of subdivision (a) of Section 1281. The~~
14 ~~amounts so included shall not be considered wages for the purpose~~
15 ~~of computing the weekly benefit amount of the individual under~~
16 ~~Section 1280 or the maximum amount payable to the individual~~
17 ~~under Section 1281.~~

18 ~~SEC. 4.— Section 1329.5 is added to the Unemployment~~
19 ~~Insurance Code, to read:~~

20 ~~1329.5. For purposes of a claim for unemployment benefits~~
21 ~~under subdivision (b) of Section 1275, all of the following apply:~~

22 ~~(a) Computation using the last four completed calendar quarters~~
23 ~~shall be based on available wage information processed as of the~~
24 ~~close of business on the day preceding the date of application.~~

25 ~~(b) If the wage information is not already in the department's~~
26 ~~system, the employer shall, within 10 days after the mailing of the~~
27 ~~request from the department, transmit to the department~~
28 ~~information on the employee's wages and any other information~~
29 ~~relevant to the request. The 10-day period may be extended for~~
30 ~~good cause.~~

31 ~~(c) If the wage, and other relevant information, requested~~
32 ~~pursuant to subdivision (b) are not received by the department, the~~
33 ~~department shall accept an affidavit of wages and other relevant~~
34 ~~information from the claimant in accordance with authorized~~
35 ~~regulations. These regulations shall be adopted as emergency~~
36 ~~regulations.~~

37 ~~(d) A determination of benefits made pursuant to subdivision~~
38 ~~(b) of Section 1275 shall be adjusted when the quarterly wage~~
39 ~~report from the employer is received if that information causes a~~
40 ~~change in the determination.~~

1 ~~(e) Except in the event of fraud, if it is determined that any~~
2 ~~information provided by the claimant on an affidavit is erroneous;~~
3 ~~no penalty or refund of benefits shall be imposed on the claimant~~
4 ~~for the period prior to the calendar week in which an employer~~
5 ~~provides subsequent wage information.~~

6 ~~SEC. 5.~~

7 ~~SECTION 1.~~ Section 4003 of the Unemployment Insurance
8 Code is amended to read:

9 4003. (a) The provisions and definitions of terms in the
10 “Federal-State Extended Unemployment Compensation Act of
11 1970,” as amended by the federal Omnibus Budget Reconciliation
12 Act of 1981 (Public Law 97-35), apply to this part. “Federal-state
13 extended benefits” means benefits payable under this part.

14 (b) There is an “on” indicator for purposes of federal-state
15 extended benefits for a week in which the rate of insured
16 unemployment for that week and the immediately preceding 12
17 weeks equals or exceeds any of the following:

18 (1) One hundred twenty percent of the average of the rates for
19 the corresponding 13-week period ending in each of the preceding
20 two calendar years, and equals or exceeds 5 percent.

21 (2) Six percent.

22 (3) (A) With respect to weeks of unemployment beginning on
23 or after February 1, 2009, both of the following apply:

24 (i) The average rate of total unemployment in the state,
25 seasonally adjusted, as determined by the United States Secretary
26 of Labor, for the period consisting of the most recent three months
27 for which data for all states are published before the close of that
28 week equals or exceeds 6.5 percent.

29 (ii) The average rate of total unemployment in the state,
30 seasonally adjusted, as determined by the United States Secretary
31 of Labor, for the three month period referred to in clause (i) equals
32 or exceeds 110 percent of that average for either or both of the
33 corresponding three month periods ending in the two preceding
34 calendar years.

35 (B) This paragraph shall apply to benefits for weeks on or after
36 February 1, 2009, and shall become inoperative on December 6,
37 2009, or on the date the federal sharable extended compensation
38 and sharable regular compensation authorized by subdivision (a)
39 of Section 2005 of Public Law 111-5 expires, whichever is later.

(c) There is an “off” indicator for a week if, for the period consisting of that week, and the immediately preceeding 12 weeks, none of the criteria specified in subdivision (b) results in an “on” indicator.

(d) For purposes of this section, the rate of insured unemployment for a 13-week period shall be determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period. This section shall be effective with respect to compensation for weeks of unemployment after September 25, 1982.

(e) The indicators specified in subdivisions (b) and (c) shall be operative only if mandated or permitted by federal law. Any amendments to the Federal-State Extended Unemployment Compensation Act of 1970, enacted before January 1, 1983, which mandate or permit any reduction in the insured unemployment rate indicator described in this section shall be operative on the effective date of the amendment.

(f) Notwithstanding any other provision of this part, the Governor may, if permitted by federal law, suspend the payment of extended duration benefits under this part, to the extent necessary to ensure that otherwise eligible individuals are not denied, in whole or in part, the receipt of emergency unemployment compensation benefits authorized by the federal Emergency Unemployment Compensation Act of 1991 (Public Law 102-164) or any extension of that act including, but not limited to, (Public Law 102-244), and that the state receives maximum reimbursement from the federal government for the payment of those emergency benefits.

~~SEC. 6.~~

SEC. 2. Section 4004 of the Unemployment Insurance Code is amended to read:

4004. (a) The department shall establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual’s benefit year. The amount established in that account, subject to subdivision (b) of this section, shall be not less than whichever of the following is the least:

(1) Fifty percent of the total amount of regular compensation payable to him or her during that benefit year under this division.

1 (2) Thirteen times his or her average weekly benefit amount.

2 (3) Thirty-nine times his or her average weekly benefit amount,
3 reduced by the regular compensation paid to him or her during
4 that benefit year under this division.

5 (b) The amount determined under subdivision (a) of this section
6 shall be reduced by the aggregate amount of additional
7 compensation paid to the individual under Part 3 (commencing
8 with Section 3501) of this division for prior weeks of
9 unemployment in such benefit year which did not begin in an
10 extended benefit period.

11 (c) For purposes of subdivision (a) of this section, an
12 individual's weekly benefit amount for a week is the amount of
13 regular compensation under Part 1 (commencing with Section 100)
14 of this division payable to such individual for such week of total
15 unemployment.

16 (d) (1) With respect to weeks beginning in a
17 high-unemployment period, the total extended compensation
18 amount payable to an eligible individual in the applicable benefit
19 year shall be not less than whichever of the following is the least:

20 (A) Eighty percent of the total amount of regular compensation
21 payable to him or her during that benefit year under this division.

22 (B) Twenty times his or her average weekly benefit amount.

23 (C) Forty-six times his or her average weekly benefit amount,
24 reduced by the regular compensation paid to him or her during
25 that benefit year under this division.

26 (2) For purposes of this section, "high-unemployment period"
27 means a period during which an extended benefit period would be
28 in effect if clause (i) of subparagraph (A) of paragraph (3) of
29 subdivision (b) of Section 4003 were applied by substituting 8
30 percent for 6.5 percent.

31 (3) To the extent permitted by federal law, if an individual
32 continues to meet all other applicable eligibility requirements, the
33 department shall not require that individual to reapply for benefits
34 to which he or she is entitled under this part.

35 (4) This subdivision shall apply to benefits for weeks on or after
36 February 1, 2009, and shall become inoperative on December 6,
37 2009, or on the date the federal sharable extended compensation
38 and sharable regular compensation authorized by subdivision (a)
39 of Section 2005 of Public Law 111-5 expires, whichever is later.

1 ~~SEC. 7. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

10 ~~SEC. 8.~~

11 ~~SEC. 3.~~ This act addresses the fiscal emergency declared by
12 the Governor by proclamation on December 19, 2008, pursuant
13 to subdivision (f) of Section 10 of Article IV of the California
14 Constitution.

15 ~~SEC. 9.~~

16 ~~SEC. 4.~~ This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the Constitution and shall go into
19 immediate effect. The facts constituting the necessity are:

20 In order to stimulate the state's weakening economy as soon as
21 possible, it is necessary that this act take effect immediately.

O